

**To:** Smith, Roxanne[Smith.Roxanne@epa.gov]  
**From:** POLITICO Pro Energy  
**Sent:** Wed 8/12/2015 9:45:30 AM  
**Subject:** Morning Energy, presented by Chevron: Colorado spill hijacks EPA agenda — Formerly nuclear Japan turns to coal — Canadian election could change energy relationship

By Alex Guillén | 8/12/15 5:44 AM EDT

*With help from Elana Schor*

**RIVER, THERE ARE NO STARS IN THE CITY:** Something tells ME there isn't a John Denver song for this one. Just a week after triumphantly debuting her Clean Power Plan, EPA Administrator Gina McCarthy has been swept away along with the 3 million gallons of polluted water EPA workers accidentally released into a Colorado river last week. The agency charged with protecting the nation's waters has found itself taking criticism from all sides for causing the accident, whether it reacted too slowly and whether the people who rely on that river and its downstream waters are in danger.

It became apparent yesterday that the incident at a long-abandoned gold mine on the Animas River might subsume McCarthy's attention. After her first public appearance since announcing the rule, an event on the Clean Power Plan at the think tank Resources for the Future, reporters at a press conference bombarded McCarthy with questions about the Colorado catastrophe. She apologized for her agency being the cause of the spill and vowed to take responsibility. Just hours later EPA announced McCarthy will fly in to visit the agency's command center in Colorado and another site in New Mexico. Besides fielding inquiries from state and local officials, McCarthy must also keep the White House and anxious congressional overseers in the loop.

**ME isn't the only one thinking this:** After writing today's intro, ME received a note from a reader: "Appears her CPP road show was unexpectedly interrupted. One day her agency says it's solving enviro problems, the next day they're creating them."

**Back to the source:** Salt Lake Tribune editorial cartoonist Pat Bagley's latest work goes back a bit to find the original creators of the waste at the thousands of abandoned mines dotting the West, "get-rich-quick capitalists." <http://bit.ly/1P4YLXR>

**Bookmark:** EPA has created a clearinghouse page on its website with updates:  
<http://1.usa.gov/1DHIqbs>

**COLORADO LAWMAKERS UNLOAD:** Gov. John Hickenlooper said Monday he is "disappointed" with EPA's handling of and communication about the incident. Colorado Republican Cory Gardner yesterday called for oversight hearings "to ensure that the EPA is held to the same recovery standards as the private sector." And Gardner, Sen. Michael Bennet and Rep. Scott Tipton asked EPA to release its short- and long-term cleanup plans:  
<http://1.usa.gov/1IJ0QFi>

**HATCH SEIZES ON SPILL TO SLAM CARBON RULE:** The spill doesn't have much to do

with EPA's Clean Power Plan, but Sen. Orrin Hatch isn't letting that stop him from mentioning the two in the same sentence. The Senate president pro tempore said it proves EPA should "focus on fulfilling its existing responsibilities, instead of focusing its resources on imposing expensive new regulations that kill jobs and hurt family budgets."

**Sen. Barbara Boxer chose a softer touch**, using a letter to EPA to thank McCarthy for briefing her staff on the issue and urging her to update affected communities and "take steps to ensure that a similar incident does not happen in the future." Boxer's letter: <http://1.usa.gov/1KgG8N4>

**TO TWEAK OR NOT TO TWEAK, THAT IS THE QUESTION:** McCarthy did talk a bit about the carbon rule yesterday. She sounded particularly optimistic that states (besides California and the other usual suspects) will actually use renewables and efficiency to go beyond the rule's reduction goals. That might mean EPA need not revisit the mechanisms set up in the rule for pushing toward decarbonization, though she didn't say if EPA would need to ever set new emission targets. "I never regret a regulation I don't have to do," she said. "Why would I want to continue to rethink this when I have it on a trajectory that's built into the market, it's going to get the reductions in pollution I want at the same time it's going to grow a market for itself in jobs. That is a total win and one I can allow to go running off way past where I expected it to go."

**Clean Power Plan 2.0?** Your host dived into the issue of a sequel to the carbon rule last week. ICYMI: <http://politico.pro/1N8vjQ7>

**MORNING READ — FORMERLY NUCLEAR JAPAN TURNS TO COAL:** Darius Dixon traveled to Tokyo to file this for POLITICO's Agenda: "The world's attention fell on a Japanese power plant yesterday, as technicians turned on a nuclear reactor for the first time since it was shut down following the catastrophic 2011 Fukushima disaster. It's scheduled to be the first of dozens to start up again, despite public opposition to reviving nuclear power in the earthquake-prone nation. To many in the energy and climate world, however, Japan's nuclear issue is just a sideshow. A bigger concern is Japan's growing role in keeping alive an energy source that President Barack Obama and Japan's allies elsewhere have been fighting to bury: coal." Read the story: <http://politi.co/1JTaglX>

**ICYMI:** The New York Times has more on the start-up of the Sendai Nuclear Power Plant in Kagoshima Prefecture: <http://nyti.ms/1Jbd8f8>

**GOOD WEDNESDAY MORNING** and welcome to Morning Energy, where today's non-energy recommended read is on potential new clues about the lost colony of Roanoke: <http://nyti.ms/1TnncGs>. Send your news to [aguillen@politico.com](mailto:aguillen@politico.com), and follow on Twitter [@alexaguillen](https://twitter.com/alexaguillen), [@Morning\\_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

**\*\* A message from Chevron:** Congratulations to the winners of the first-ever US2020 STEM Mentoring Awards. Chevron is proud to be a Co-sponsor of the award, and to recognize the mentors who are helping cultivate the next generation of STEM professionals. See how Chevron supports America's future innovators: <http://tinyurl.com/olbjs73> \*\*

**CANADIAN ELECTION COULD CHANGE ENERGY RELATIONSHIP:** Keystone XL will not be on the ballot when Canadians choose a new leader this fall, but the election still could upend the U.S.'s energy relationship with its northern neighbor. A defeat for Conservative Prime Minister Stephen Harper in October could usher in tougher limits on the carbon footprint of Canada's emissions-heavy oil sands, the fuel source that ensures the nation's role as the No. 1 supplier of oil to the United States. It would also give President Barack Obama a more forceful partner in negotiations for a tough international climate deal at the end of this year. Elana Schor fills you in: <http://politico.pro/1J3kOyb>

**NO CALIFORNIA LOVE IN GREENS' NEW CHEMICAL REPORT:** The Environmental Working Group is out today with an analysis of 197 different chemicals used in fracking fluids in California between 2013 and February of this year, and the activist group found a dozen listed as hazardous air pollutants under the Clean Air Act as well as 15 that the state designated as known to cause cancer or reproductive harm. The group also compared its new fracking findings with an EPA report from earlier this year that used data from the industry-government website FracFocus. EWG's analysis found "some of the most hazardous chemicals are used less often in California than nationwide, but the typical California job uses about twice as many distinct chemicals as the national average," according to the report. Check it out here: <http://bit.ly/1TqxjoT>

**ME FIRST — NATURAL GAS, THE LAST FRONTIER'S FINAL FRONTIER:** A recent downgrade in Alaska's credit rating during the current oil-price downturn raises the economic stakes for completion of its long-stalled liquefied natural gas export projects, the conservative think tank American Council for Capital Formation argues in a new paper today. On top of the "expertise garnered from nearly a half century of exploration and extraction," ACCF's Margo Thorning writes, Alaska's location leaves it "very well positioned to move LNG by tanker to the energy-hungry, growing markets of Asia through sea lanes far less vulnerable to political volatility and instability than the Middle East." Here's the complete report: <http://politico.pro/1h0r67s>

**THE OZONE ZONE:** The latest in ozone news.

**Rocky Mountain High (Ozone Levels):** The Center for Regulatory Solutions, an initiative of the Small Business and Entrepreneurship Council, has a report out today arguing that a tightened ozone standard "could have a serious and deleterious impact on Colorado's economy, just when the state is putting the Great Recession in the rear-view mirror." The report warns that unless EPA sticks to the current 75 parts per billion standard, more than a dozen Colorado counties would be out of attainment. That "effectively hands over to EPA significant control over permitting and planning programs." Read: <http://bit.ly/1PjQOyT>

**Science watch:** The western U.S. cut emissions of ozone-forming substances by 21 percent between 2005 and 2010 but atmospheric ozone didn't drop in response because of pollutants from China and natural atmospheric processes, according to a new study from NASA's Jet Propulsion Laboratory and scientists in the Netherlands. The paper, published this week in Nature Geoscience, concludes that "global efforts may be required to address regional air quality and climate change." <http://bit.ly/1IY173>

**From the mailbag:** The American Lung Association and other public health groups urge the Obama administration to “put in place an ozone standard that fully protects the millions of Americans still at risk from dangerous levels of ozone pollution.” <http://bit.ly/1HEi4lk>

**Chamber continues transpo warnings:** The U.S. Chamber of Commerce has released its second report warning that a lowered ozone standard could mean EPA blocks highway funding for cities that can’t meet the new limit. (EPA has never actually withheld highway funding for nonattainment, a power granted it under the Clean Air Act.) This time the Chamber is targeting Las Vegas, which it says could be at risk of losing \$346 million for ten projects. <http://bit.ly/1KgEYkM>

## MOVERS, SHAKERS

**Nuclear waste:** Sarah Hofmann, a member of Vermont's Public Service Board, is the new chair of the Nuclear Waste Strategy Coalition, a group of energy companies and utility commissioners. Hofmann plans to push Congress to fund the Yucca Mountain license review as well as further storage steps. The coalition has also picked up Florida regulator Julie Brown to its executive committee, where she will work on attracting new members.

**Clean energy:** The Solutions Project, a clean energy advocacy group connected to Mark Ruffalo and Josh Fox, has picked up Tyler Nickerson to lead national and state-level policy work. He was previously with the Dyer-Ives Foundation in Michigan.

**GREEN GROUP WANTS COMMERCE TO BLOCK GAS EXPORTS:** The Center for Biological Diversity today will ask the Commerce Department to ban the export of natural gas. The U.S., which used to be a gas importer, has begun moving toward exporting the vast stores unlocked by the fracking boom in the last decade, and CBD is hoping to throw a wrench into those plans. The group argues that Commerce was supposed to issue a rule on gas exports decades ago under the Energy Policy and Conservation Act of 1975. Don't expect this petition to get too far. Boosting gas exports enjoys some bipartisan support in Congress, and the Obama administration has hardly shied away from approving gas export applications. CBD’s petition: <http://bit.ly/1hwIHnc>

## QUICK HITS

— ERCOT's board of directors has picked general counsel Bill Magness as its new president and CEO. FuelFix: <http://bit.ly/1MjeyDp>

— A federal court weighs whether to uphold a federal polar bear habitat designation. AP: <http://bit.ly/1JTsXpx>

— The Washington Times looks at residents' confusion and concern following the Duke coal ash spill last year: <http://bit.ly/1TrPvyv>

— Carter-era undersecretary of energy John Deutch calls for lifting the ban on crude oil exports

in a Wall Street Journal op-ed: <http://on.wsj.com/1MmUMIJ>

**THAT'S ALL FOR ME.** Mostly sunny, high near 84.

**\*\* A message from Chevron:** Congratulations to the winners of the first-ever US2020 STEM Mentoring Awards. Chevron is proud to be a Co-sponsor of the award, and to recognize the mentors who are helping cultivate the next generation of STEM professionals. See how Chevron supports America's future innovators: <http://tinyurl.com/qfua3q3> \*\*

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[How much further can EPA stretch the Clean Air Act?](#)

[Canadian election could upend energy relationship with U.S.](#)

### How much further can EPA stretch the Clean Air Act? [back](#)

By Alex Guillén | 8/4/15 4:42 PM EDT

EPA has stretched the Clean Air Act as far as it's ever been stretched to implement an ambitious plan to reduce electric utilities' carbon footprint.

Before long, it may be time to stretch it even further.

The Obama administration took the single biggest step the U.S. has ever taken to address climate change with the final carbon rules for power plants unveiled Monday. But legal experts and supporters of the rule say the Clean Power Plan is just the first step on a long road toward squeezing heat-trapping gases out of the atmosphere. However, opinions are split over how far EPA would eventually be able to stretch its novel application of the Clean Air Act.

Administration officials estimate that the power sector's greenhouse gas emissions will fall nearly one-third from where they were 10 years ago by 2030, but they acknowledge the rule on its own will not be enough for the U.S. to live up to the commitment President Barack Obama has made ahead of global climate negotiations in Paris at the end of this year. To hit that target of a 26-to-28 percent reduction from 2005 levels across the whole economy by 2025, the administration is looking to other existing policies such as its tougher fuel economy standards to reduce vehicles' carbon footprint, and voluntary programs in the agriculture sector.

Still, analysts say nothing that has been proposed to date would secure the deep, long-term emission cuts scientists say are needed to avoid catastrophic global warming — meaning EPA may eventually try to do more with its current authority.

The agency is already in largely uncharted water with the rule it finalized this week, and future action would be heavily influenced by the next president, his or her successors, Congress and the courts.

An EPA spokeswoman said the agency is focused on implementing the new carbon rules, not discussing “hypothetical scenarios.”

It is difficult to judge the shape of a Clean Power Plan 2.0, but EPA’s approach so far offers some clues.

EPA is using section 111(d) of the Clean Air Act to justify the carbon rule, which will first have to survive furious legal challenges that are expected to wind their way to the Supreme Court no earlier than 2017. Should the rule survive those challenges, a litany of specific complaints about individual state targets and other issues could last into the mid-2020s. It’s a rarely used section of the law — designed for air pollutants that are not addressed elsewhere in the statute — and EPA says it justifies requirements beyond the law’s traditional mandate for power plants and factories to install pollution controls on site.

The statute does not direct EPA to periodically revisit and strengthen 111(d) rules, as is the case with other programs such as the national ambient air quality standards, which EPA recently proposed tightening for ozone. But it also does not explicitly bar EPA from doing so.

“On its face it looks like once states submit plans... that’s a one-time deal,” said Jeff Holmstead, a George W. Bush-era air chief at EPA who is now a lobbyist at the Washington firm Bracewell & Giuliani.

EPA would be emboldened if courts uphold the Clean Power Plan, especially where it goes outside the boundaries of regulated plants themselves, predicted Holmstead, whose clients include Arch Coal and Duke Energy.

“But EPA could certainly try to [eventually impose tighter carbon dioxide limits], and if they win on the ‘beyond the fence line’ thing, I think they’re likely to come back and try that,” he said.

This is not the first time EPA has used 111(d). In the late 1970s and early 1980s, EPA used it to limit acid mist emissions from sulfuric acid plants and emissions of fluorides from phosphate fertilizer plants and primary aluminum plants, among other applications. But the agency never revisited those rules for a second round, so there’s no precedent to draw on. Not to mention that those early pollutants were nowhere near as ubiquitous as carbon dioxide.

In the meantime, several experts suggested that before revisiting the carbon rule for power plants, EPA may decide to go after lower-hanging fruit in other parts of the economy, such as the oil industry.

The part of the Clean Air Act EPA used to write the rule isn’t just limited to power plants, meaning the agency could also go after other big sources, such as cement plants, chemical facilities, iron and steel mills and more.

“The law didn’t just say [to] do cars, trucks and power plants,” said Carol Browner, the Clinton-

era EPA administrator and first-term adviser to President Barack Obama. “It said look at all sources. So refineries would be the next big one.”

If the power plant rule survives legal challenges intact, it could become a template to require further reductions from those sources.

“I think that 111(d) is a good, reasonably fit instrument for dealing with this, and it may be that we think, ‘Oh, this is working OK,’ and then that’s what we’ll use,” said Sean Donahue, an attorney who works with the Environmental Defense Fund on the carbon rule. “But it’s pretty early to tell right now.”

In addition to uncertainty over who will be the next president or control the next Congress, the government’s future approach to climate change will be heavily influenced by technological advances in the power sector. And those advances could take any number of unpredictable forms, judging by recent history.

Witness the “nuclear renaissance” predicted more than a decade ago that so far has failed to materialize, or the dethroning of coal as king of U.S. power supply, or the largely unanticipated fracking boom that has turned the country into a global oil and gas powerhouse, or the dramatic revolution in wind and solar, whose still-small market share is steadily rising as their costs fall. The Clean Power Plan itself is expected to incentivize nuclear, renewable energy and efficiency, and who knows what ripple effects follow.

“2030 is a long way off,” Donahue said. “If it’s like other major pollution control efforts under the Clean Air Act, it is likely that we’re going to find we can do things more cheaply that we thought and faster when we set out minds to it.”[back](#)

## **Canadian election could upend energy relationship with U.S. [back](#)**

By Elana Schor | 8/12/15 5:00 AM EDT

Keystone XL will not be on the ballot when Canadians choose a new leader this fall, but the election still could upend the United States’ energy relationship with its northern neighbor.

A defeat for Conservative Prime Minister Stephen Harper in October could usher in tougher limits on the carbon footprint of Canada’s emissions-heavy oil sands, the fuel source that ensures the nation’s role as the No. 1 supplier of oil to the United States. It would also give President Barack Obama a more forceful partner in negotiations for a tough international climate deal at the end of this year.

Harper’s three reelection foes lambaste his relentless pro-Keystone advocacy, and his moves to ease environmental rules as a drag on Canada’s economy and its international reputation. His leading challenger comes from the same New Democratic Party that unseated Harper’s conservatives earlier this year in Alberta and proceeded to crack down on the oil sands industry that is central to the province’s economy.

NDP leader Thomas Mulcair, who holds a slight lead over Harper in recent polls, has said Canadian regulators should consider emissions impacts before approving pipelines or other oil infrastructure. He has promised to “get us on track to deal with the very real issue of climate change” ahead of the United Nations negotiations in Paris.

The question is how far Mulcair can go in reining in Canada’s oil industry without disrupting the economic boost provided by the country’s energy exports when low prices, and Keystone’s long-in-limbo status, are already causing hand-wringing.

“Canada does have this resource and people in the world need it,” David Biette, senior adviser to the Wilson Center think tank’s Canada Institute, said in an interview. “It’s a question of at what price and on what route.”

Canada’s independent National Energy Board has already approved Keystone XL, but Obama’s recent negative comments about the pipeline have given sponsor TransCanada ample reason to expect a rejection of the permit it needs to cross the U.S. border.

Mulcair would have greater sway over two oil transportation projects that have not yet been approved: TransCanada’s \$12 billion Energy East pipeline to Canada’s Atlantic coast and an expansion of Kinder Morgan’s westbound Trans Mountain pipeline. The opposition leader has criticized Enbridge’s Northern Gateway pipeline and Keystone but has not staked out clear positions on Energy East or Trans Mountain, both of which could ship fuel to ports that serve coastal U.S. destinations.

Thursday’s debate among the four Canadian party leaders featured the kind of lengthy, in-depth discussion of climate and energy policy that was completely absent from the debate among U.S. Republican presidential candidates the same night. Even as he criticized Harper’s environmental record, Mulcair referred to the Energy East project as one that “could be a win-win-win” by creating Canadian jobs while giving the nation’s oil companies a higher price for their fuel.

Along with Harper and Mulcair, two other candidates are seeking the premiership: Liberal Justin Trudeau, who aligns with Mulcair’s vow to reform the current oil infrastructure review process but remains pro-Keystone, and Green Elizabeth May, who is against the entire passel of pipeline proposals.

Mulcair’s lack of a firm yes or no stance on Energy East is causing him headaches on the campaign trail this week. Protesters interrupted an appearance to promote the NDP leader’s autobiography on Monday, pressing him to commit to a rejection of the TransCanada project if it is found to significantly contribute to climate change. Mulcair assented and later posed for a photo with the demonstrators, [CBC reported](#).

Beyond its record-setting price tag, Energy East carries outsize significance for greens in part because its application with Canada’s National Energy Board is still waiting on an update later this year to account for a scrapped marine terminal in Quebec. Greens say that leaves room for Mulcair, if his party prevails in October, to subject TransCanada’s massive project to a potentially more stringent environmental review process than the NEB gave to Keystone and

other pipelines.

Environmentalists also will try to force Mulcair to reconcile any moves that could expand oil sands development with the goals of a United Nations emissions-cutting deal that he endorsed in strong terms on Thursday.

“I would love nothing more than” to attend U.N. climate talks in Paris in December as Canada’s new leader, Mulcair said at the debate, and “get us on track to deal with the very real issue of climate change.”

Greenpeace Canada’s Keith Stewart said the Canadian system would give Mulcair broad leeway to implement climate-focused reforms to infrastructure reviews without passing new legislation through Parliament, where his party is not expected to hold a majority of seats even if an NDP plurality pushes him to victory.

Should Mulcair prevail, Stewart said, his New Democrats “can now tell the [National] Energy Board, ‘This is how you have to determine what’s in the national interest.’”

Even so, the timing of Canadian elections so soon before the Paris talks means that Mulcair would have little time to craft a detailed realignment of a national climate policy that Harper has largely ignored, said Divya Reddy, director of global energy and natural resources at Eurasia Group consulting firm.

Rachel Notley, the NDP’s new premier in Alberta, took her own steps to get tougher on the oil sands in June by doubling per-ton carbon intensity fees over the next two years. But the Obama administration is looking for stronger commitments on a national level from Canada, which drew jeers from climate advocates for promising the U.N. it would cut greenhouse gas emissions 30 percent from 2005 levels by 2030 without new regulations on the oil sands.

Still, Reddy added, “If Mulcair were to promote something with more teeth on the federal level, as well as include emissions from the [oil sands] sector as part of a national agenda, that could at the margins be helpful in terms of advancing” both future pipeline projects and a new Canadian climate policy beyond Paris.

And that prospect of Mulcair pressing ahead with some new oil-sands transportation plans would create new challenges for the green campaign against the heavy resource that has paid such dividends on Keystone. Harper’s pursuit of the industry-friendly status quo makes him a potent enemy for activists, but Mulcair would be a harder target — and Stewart acknowledged that the New Democratic leader “can’t just write off Alberta” by taking a hard line against the oil sands.

“Shoving down the oil sands is so anti-Alberta that it’s not good for” Canadian national unity, Biette of the Wilson Center said.

While Canada’s climate future commands significant airtime during its election season, Keystone is increasingly viewed as a permanent casualty thanks to the increasingly critical tone that Obama has taken on the \$8 billion pipeline since last year. Obama’s dedication to the EPA

emissions regulations released last week are only intensifying the perception on both sides of the border that a rejection of the long-stalled pipeline is imminent.

“If the president wants to build on the moment from the Clean Power Plan and show seriousness before Paris, rejecting Keystone would be the right thing to do,” 350.org co-founder Jamie Henn said in an interview.

The State Department, despite rampant speculation that an announcement on the pipeline would come quickly on the heels of the EPA regulations, continues to review whether the Canada-to-Texas project is in the national interest, with no firm time frame for an official recommendation to Obama. Environmentalists, however, are already thinking about the type of denial they want to see from the president — which looks a lot like the campaign-trail rhetoric of Mulcair.

“The real win would be a climate test applied to all future infrastructure projects,” Henn said.[back](#)

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